

REMARKS

Claim 27 to 33 and 35 to 56 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for accepting the drawings and for acknowledging the claim for foreign priority, and for indicating that all of the certified copies of the priority documents have been received.

Claims 27 to 33, 35 to 41, and 55-56 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,515,589 ("Schneider") in view of U.S. Patent No. 4,769,550 ("Dolnick") in further view of U.S. Patent No. 5,381,130 ("Thuillard").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As to claim 27, the Thuillard reference does not disclose or suggest a first and second beam path that are parallel, in which the resulting first and second scattering volumes do not overlap. In particular, as to Figures 5 and 5A of the Thuillard reference, the subject

features are not disclosed or suggested, and the applied reference explicitly teaches away from this subject matter. The Final Office Action (at page 4) conclusorily asserts that reference items 2 and 22 (both radiation sources) emit beams that are parallel and do not coincide. A plain viewing of Figure 5 of Thuillard wholly contradicts this unsupported assertion. Figure 5 specifically indicates that radiation sources 2 and 22 are closely situated to produce optical beams that overlap to produce a single optical beam (reference item 3). (See Thuillard, Figure 5).

In particular, the Thuillard reference specifically discusses the optical beam 3 as being from both radiation source 2 and radiation source 22. (See Thuillard, col. 8, lines 31-32), and it further indicates that radiation sources 2 and 22 are closely adjacent to each other, so that they have radiation profiles (scattering volumes) that overlap. (See Thuillard, col. 8, lines 41-43). The Thuillard reference refers to radiation sources that are not parallel and have overlapping beams and that have scattering volumes that overlap. Therefore, Thuillard plainly teaches away from the subject matter of claim 27, so that it does not disclose or suggest the feature of a first and second beam path that are parallel and the resulting first and second scattering volumes do not overlap, as provided for in the context of the presently claimed subject matter.

The Schneider and Dolnick references do not disclose the feature of a first and second beam path that are parallel and the resulting first and second scattering volumes do not overlap, as admitted on page 3 of the Final Office Action.

For the foregoing reasons, claim 27 is allowable, as are its dependent claims 28 to 33, 35 to 41, and 55-56. It is therefore respectfully requested that the anticipation rejections be withdrawn

Claims 42 to 54 were rejected under 35 U.S.C. § 103(a) as unpatentable over Schneider, Dolnick, and Thuillard in view of U.S. Patent 6,218,950 ("Politze").

Claim 42 is directed to a method and includes features like those of device claim 27. As explained above, the combination of Schneider, Dolnick, and Thuillard do not disclose or suggest the feature of a first and second beam path that are parallel and the resulting first and second scattering volumes do not overlap. Similarly, the Politze reference does not disclose this feature as provided for in the context of the presently claimed subject matter, nor is the Politze reference asserted to do so.

Accordingly, claim 42 is allowable, as are its dependent claims 43 to 54.
Withdrawal of the obviousness rejections is rejection is requested.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 27 to 33 and 35 to 56 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of presently pending claims 27 to 33 and 35 to 56 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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By: 

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

reg no.
33,865
Ava C
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